

# AIRGRAM

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TO : Ambassador ANKARA

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INFO : MOSCOW, ISTANBUL, USCINCEUR, CINCUSNAVEUR,  
COMSIXTHFLT - NAVY-3

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Straits-Montreux  
Convention

FROM : Department of State

DATE:

SUBJECT : Legal Questions on the Montreux Convention

REF : (A) ANKARA 7433, 241100Z Nov 70;  
(B) ANKARA 7411, 231430Z Nov 70; (Both NOTAL).

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Director-General Akyamaç of the UN and Straits Affairs Office of the Turkish Ministry of Foreign Affairs indicated to an Embassy officer November 24 (see ref A) that the Ministry would be happy to receive the views of the United States on certain matters of legal interpretation arising under the Montreux Convention. Four questions concerning the Montreux Convention that have been of recent interest to the United States or have been raised by the Ministry of Foreign Affairs are covered in this airgram. Given below are these four questions and the conclusions concerning them resulting from the Department's legal analysis. The discussion and legal analysis underlying the conclusions are provided in the enclosure to this airgram. The Department encourages Embassy Ankara to continue its useful dialogue with the Ministry of Foreign Affairs on the Montreux Convention, drawing on the material in this airgram, and looks forward to the Embassy's further reports of this dialogue.

I. The period of advance notification which must be provided by a non-Black Sea State that wishes to send warships through the Straits in time of peace.

Conclusion: Non-Black Sea States that wish to send warships through the Straits in time of peace are required under Article 13 of the Montreux Convention to provide Turkey with notification through diplomatic channels eight days before the intended transit. It is desirable, but not obligatory, that this notification

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be made by non-Black Sea States fifteen days in advance of the intended transit. Non-Black Sea States are constrained, however, from exercising arbitrarily their right to notify Turkey only eight days before an intended transit. The United States should, therefore, exercise its right to utilize the eight-day rule only in instances of special concern.

## II. USSR Practice of Neither Executing nor Cancelling 80 Per Cent of its Notices.

Conclusion: The notification system is intended to facilitate equitable passage of the Straits for all States without discrimination. Use of the system by any State for purposes other than to facilitate non-discriminatory passage is contrary to the spirit and objectives of the Montreux Convention. Turkey is entitled to consult with the offending State and others and may in certain instances adopt new procedures to ensure the efficient operation of the Convention.

## III. Night Passage and Anchorage in the Straits.

Conclusion: The Montreux Convention is somewhat ambiguous as to whether night passage and anchorage of foreign naval vessels in the Straits is permitted. The stronger argument is that night passage but not night anchorage is permitted. It is clear, however, that the Convention must be interpreted consistently for Black Sea and non-Black Sea States.

## IV. Deception Practiced by USSR Civil Aircraft Under Article 23.

Conclusion: Civil aircraft flights between the Mediterranean and Black Seas can only operate within the limitations prescribed by the Montreux Convention and in accordance with Turkish regulations. Turkey has the power to control or suspend flights contrary to the Convention or otherwise harmful to its security.

Enclosure:

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Legal Questions.

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GROUP 3

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Legal Questions on the Montreux Convention  
Discussion and Legal Analysis

1. The period of advance notification which must be provided by a non-Black Sea State that wishes to send warships through the Straits in time of peace:

Discussion:

Turkish officials recently informed us that in their opinion it was not permissible for a non-Black Sea State to give notification only eight days before an intended transit. They based their contention that a fifteen-day notification is required on the negotiating record of the Conference at Montreux and on their belief that in the 34-years during which the Montreux Convention has governed operation of the Straits no non-Black Sea State has given less than a fifteen day notification.

The relevant provision of Article 13 of the Convention is as follows:

"The transit of vessels of war through the Straits shall be preceded by notification given to the Turkish Government through the diplomatic channel. The normal period [La durée normale] of notice shall be eight days; but it is desirable [mais il est désirable] that in the case of non-Black Sea Powers this period should be increased to fifteen days."

The meaning of this provision would seem clear. An interpretation to the contrary is not supported by the official negotiating record of the Conference. The text was discussed most definitively at the Thirteenth Plenary Session, July 15, 1936. Mr. Aras, the Foreign Minister and leader of the Turkish Delegation, proposed the following compromise of the Soviet and British views: "We allow a notice of eight days as the rule, but countries of the Mediterranean and beyond are requested [priés] to give a notice of fifteen days." The delegations continued:

United Kingdom -- "I do not understand exactly what is the import of the Turkish suggestion, since everything depends upon the exact meaning of the words 'sera prié ou requis de donner un préavis d'au moins quinze jours' [will be asked or

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required to give a notice of at least fifteen days]. We have always considered that one and the same rule ought to apply to all the parties. We see no objection that a hope be expressed or that one says that it is desirable that a different procedure be applied to the non-Black Sea Powers, but it does not stand out very clearly from the declarations that Mr. Aras has just made to what degree it will be possible for a fleet of a non-Black Sea Power to count in an emergency on the rule of eight days by which the necessity is set aside for such a Power to give a notice of at least fifteen days.

"One has said that the question before us would be resolved if one adopted a period of eight days, of ten days, or of another period, and if, by means of an exchange of notes or of an additional protocol or of some other instrument of this type the non-Black Sea Powers could agree to give a longer notice. I don't know if that would be possible, but what we want to preserve in this article is the principle of equality, while adopting a formula which would in fact lead the non-Black Sea Powers to give a longer notice without actually having the obligation to do it."

Turkey -- "I have not ascertained a difference between my suggestion and the point of view of the British Delegation. I intended to say that, normally, one ought to give a notice of eight or ten days, but that it is nevertheless desirable that this notice be conveyed at fifteen days for the non-Black Sea Powers."

United Kingdom -- "We have no objection to the formula that has just been suggested by the representative of Turkey. What led us to speak was that he had said that the Powers in question would be asked to give a longer notice of at least fifteen days. That seemed to me to be more an expression of an obligation than of a hope or of something desirable, contrary to what the Turkish delegate now proposes."

Chairman (Australia) -- "Under these conditions the Drafting Committee ought to be asked to draw up this article on the following basic principle: the normal notice will be eight days, but it is desirable [souhaitable], in the case of non-Black Sea Powers, that the time be extended to fifteen days."

The Conference agreed to the proposal of the President, and the following additional observations were made:

USSR -- "It is not a question of principle but of realities. I don't insist that a discrimination be made between the Black

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Sea and non-Black Sea States; I don't even insist that one make use of expressions like 'Black Sea and non-Black Sea countries.' All that interests me is the reduction of the delay for the countries situated on the Black Sea, and I mention this for the sake of the Drafting Committee. I am instructed not to go beyond five days, but I take it upon myself to accept the period of eight days."

Chairman -- "The question raised by the representative of the USSR is settled in effect because, after the Turkish Delegation made its viewpoint known, I asked very plainly if we were agreed upon the fundamental principle of eight days. Can I consider that this is the case?" The record then shows that the fundamental principle [la base] of eight days was adopted by the conference.

The compromise reached at the Thirteenth Session followed considerable elaboration at earlier sessions of the points of view of the parties. The Turkish draft convention, which was the original basis for discussion, proposed that a notice period of one month be established for all States regardless of their relation to the Black Sea. The draft prepared by the British Delegation, which became the focus for discussions during the course of the Conference, proposed a notice period of fifteen days, again without discrimination. At the session of July 7, 1936, Turkey indicated that it considered the British draft acceptable on this point, but the USSR objected that the period of notice for Black Sea States ought to be no more than three days. The USSR considered that fifteen days would be a reasonable notice period for non-Black Sea States.

The United Kingdom argued that the purpose of a notice period was essentially administrative in order to allow Turkey sufficient time to make the calculations required under other articles with regard to the tonnage permitted within the Straits and the tonnage of non-Black Sea States permitted in the Black Sea on a given day. No reason existed, in the British view, therefore, for discrimination on the basis of a State's relation to the Black Sea. Turkey explained that it regarded a notice period as necessary to assure the security of the Straits, that is to ensure that no more than a certain level of tonnage and number of warships were in the Straits on a given day, and in order to have time in which to make the necessary calculations with regard to this and to the tonnage that would be in the

1/ The above translation from the Actes de la Conference Montreux, pp. 137-138 is unofficial; the official French text is attached.

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Black Sea. She considered that administratively a period of three days would be impossible. Her initial objections to the rule of eight days were likewise based not on a principle of discrimination between Black Sea and non-Black Sea States, but on a concern that the shortness of notice might cause administrative difficulties.

From the above, it is apparent that no State has an obligation to provide Turkey with notice more than eight days prior to an intended transit of the Straits by its warships. A fifteen day notice is desirable in the case of non-Black Sea States as an administrative convenience since Turkey is required elsewhere in the Montreux Convention [Article 18] to make more complex calculations with regard to tonnage in the Black Sea in the case of non-Black Sea States. No question of strict legal obligation is involved, however, in the adherence of a non-Black Sea State to the desirable fifteen day notice period.

This is not to say, however, that non-Black Sea States may consider themselves completely free to utilize their right to make a notification to Turkey only eight days prior to an intended transit. The desire of all parties to the Montreux Convention that a fifteen day period be observed by non-Black Sea States was clearly expressed at the Conference and in the text of Article 13. The rationale was also clearly expressed and understood. The Turkish Foreign Office has correctly observed that a record of 34 years of continuous utilization by non-Black Sea States of a fifteen day notice period gives additional weight to this expression of desire. Self-abnegation cannot, of course, destroy a right stated in the Montreux Convention, but it fortifies the understanding that the right ought not to be invoked by non-Black Sea States without serious reason.<sup>1/</sup>

<sup>1/</sup> The Foreign Office may note the Vienna Convention on the Law of Treaties, which states generally accepted rules of interpretation. Article 31 paragraph 3 provides that "There shall be taken into account, together with the context:...(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation." In this regard, it should be pointed out that failure to exercise a right of eight days notice for 34 years indicates the good faith in which non-Black Sea States have observed the expressed desire of the drafters of the Convention but, given that expressed desire, cannot be construed as a waiver of that right. The basic interpretive rule stated by Article 31 of the Vienna Convention is that "A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."

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It will be recalled that the Statement of the United Kingdom Delegation that elicited the basic agreement of the Delegation of Turkey, referred to utilization of the eight-day rule in an emergency ["cas d'urgence"] by which the necessity for a fifteen day notice was removed [par laquelle est écartée la nécessité]. It is not suggested at any point in the Convention or in the negotiating record that a State or institution other than the non-Black Sea State concerned should have the right to determine in what instance it is considered necessary to make use of the eight day notice period. Nonetheless, consistent with the negotiating record and the practice under the Convention, a non-Black Sea State would not be justified in arbitrary utilization of the eight day rule. The United States should, therefore, exercise its right to utilize the eight day rule only in instances of special concern. With regard to minimizing the administrative difficulties that the exercise of this right imposes upon Turkey under the Montreux Convention and with regard to an effective United States-Turkey relationship in general, it would seem desirable and in accord with the spirit of the Montreux Convention for the United States to consult with Turkey when it proposes to exercise this right. Alternatively, the United States might indicate to Turkey the nature of the circumstances in which the United States would expect to make use of its right.

## II. USSR Practice of Neither Executing nor Cancelling 80 Per Cent of its Notices.

### Discussion

Dogan Alpan, acting Deputy Director of the UN and Straits Affairs Office of the Turkish Foreign Office, told an Embassy officer November 23 that the Soviets, on receipt from Turkey of a notification that the United States intends to pass warships through the Straits, commonly preempt a number of days before and after the intended U.S. date by submitting notifications of intended transit. Eighty percent of the Soviet transits for which notifications are given are not executed, and Turkey is not informed in advance that the transits have been postponed or cancelled. Mr. Alpan added that he believed Turkey was about to open discussion of this matter with the Soviets. On November 24 Mr. Akyamac, Mr. Alpan's superior in the Foreign Office, referred in a conversation with an Embassy officer to the problem of Soviet preemption of dates in the vicinity of intended U.S. transits and suggested that the U.S. might in the future work the preemption provisions of the Montreux Convention to its own advantage.

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Article 13 of the Montreux Convention contains two references to non-execution of transit on a day for which a notification has been submitted. A change of date is subject to three days' notice. Entry into the Straits for the outward passage (for non-Black Sea States, from the Mediterranean into the Black Sea, and vice versa for Black Sea States) must take place "within a period of five days from the date given in the original notification. After the expiry of this period, a new notification shall be given under the same conditions as for the original notification."

Transit, then, can occur only on a date for which notice has been given. A State may transit on any of five days subsequent to the originally announced date if a revised intention is communicated to Turkey at least three days in advance. If no transit is effected within five days subsequent to the original date, it may not be effected until all the provisions of a new notification are met. No further consequence is prescribed by the Convention for failure to execute a transit or for failure to communicate revised intentions to Turkey.

Article 14 provides that "the maximum aggregate tonnage of all foreign naval forces which may be in course of transit through the Straits shall not exceed 15,000 tons", except for the special provisions of Article 11 that permit a Black Sea State to send through large capital ships. Article 14 also provides that no more than nine vessels of foreign naval forces are permitted in transit through the Straits at the same time.

From the foregoing, it is apparent that a Black Sea State may effectively block transit of the Straits to a non-Black Sea State for any day by notifying Turkey of its intention to transit naval vessels aggregating 15,000 tons or totalling at least nine, and to another Black Sea State by notifying Turkey of its intention to transit nine naval vessels. A non-Black Sea State can effectively block transit of the Straits to a Black Sea State for any day by notifying Turkey of its intention to transit nine naval vessels. In theory, any State could submit such notifications covering every day of the year.

The Montreux Convention envisages circumstances in which States will have to accommodate their naval schedules to the requirements of other States. It does not, however, envisage effective preemption of the legitimate naval activities of any State. Article 1 affirms "the principle of freedom of transit and navigation by sea in the Straits" subject to certain provisions. The purpose of the notification system, as explained by the Turkish Delegation in its first detailed exposition at the Conference at Montreux, is "to regulate passage between the

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various Powers whose vessels wish to involve themselves in the Black Sea."<sup>1/</sup> Where one State issues notifications for the purpose of denying passage through the Straits to another State, or where a State makes such use of the notification system that denial is effected in a significant number of cases, there is a serious breakdown in the operation of the Montreux Convention.

Retaliation by a victim State would further violate the purpose of the notification system and threaten the continued viability of the Convention. It would seem neither legal nor prudent for the U.S. to issue preemptive notifications for dates on which it does not intend to effect transit. On the other hand, Turkey has responsibilities under Article 24 of the Convention to "supervise the execution of all the provisions of the present Convention relating to the passage of vessels or war through the Straits." Turkey may then be expected to consult with any State whose notifications are so numerous and so frequently unexecuted that the legitimate transit activities of other States are hampered or that Turkey's administrative responsibilities are affected. As a preliminary goal of such consultations, Turkey might seek to obtain assurances that it will be informed promptly when the State concerned has determined not to make use of a notification already submitted.

If such assurances are not received, if the legitimate activities of other States are still unduly hampered, or if Turkey's administrative responsibilities are still seriously affected, Turkey might consider adopting a revised procedure with regard to the notification system. At present it does not accept a notification if it is already in receipt of a notification of transit that, if executed, would occupy the Straits on the cited day with the maximum of tonnage or vessels. This procedure assumes the good faith execution of all notifications. There is nothing, however, in the Montreux Convention that renders it impossible for Turkey to accept a subsequent notification for a transit on a day already theoretically preempted.

Turkey might accept such a notification with the caution that if a prior notification is executed, the second State will be required to submit a notice of change of date and postpone transit of its vessels for at least three days. In the event that vessels of both notifying States present themselves for transit simultaneously, the vessels possessing the prior notification would be given precedence. In the event that the vessels of the prior notifying State present themselves for transit after the vessels of the other State have already

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<sup>1/</sup> "pour régler le passage entre les diverses Puissances dont les bateaux veulent s'engager dans la mer Noire," Actes, 31.)

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begun their transit, the prior notifying State would be expected to submit a notice of change of date and postpone their transit for at least three days.<sup>1/</sup>

This revised procedure, if required by serious abuse of the notification system, would be consistent with the spirit and letter of the Convention. It is significant that the Convention does not give any special rights to a State that has first submitted a notification and requires only that no transit be executed by a vessel whose State has not followed the prescribed procedures. Where Turkey is in possession of information indicating that the procedure it follows with respect to acceptance of notification is encouraging abuse of the notification system and restricting the legitimate activities that the Montreux Convention regulates, it is clearly entitled, if not required by its supervisory role, to revise that procedure in order to accomplish the purposes of the Convention. The revised procedure described above would in some ways not be preferable to the present system adhered to in good faith by all States since it would not guarantee that a State would be able to transit the Straits on the day for which it makes a notification. It would, however, satisfy the purposes of the Convention: no transit of the Straits would be executed except after due notice, transits on a given day would be limited, and States would be in receipt of information with respect to intended transits and naval activity in the Black Sea.

### III. Night Passage and Anchorage in the Straits.

#### Discussion

United States Navy vessels have on a number of instances performed part of their transit of the Straits at night, although we believe they have always commenced transit during the day and have not anchored at night in the Straits. We have indications that the Soviets have likewise performed part of their transit at night on a number of instances and that they have in addition anchored at night in the Straits. The Turkish Foreign Office has told us that it considers the Montreux Convention to forbid night transit and that henceforth it will not agree to the execution of such a transit by the U.S. The Foreign Office has not indicated that it is aware of Soviet night transits and anchorages, but it has said that the prohibition against night transits must be applied to States without

<sup>1/</sup> If Turkey were to adopt such a procedure, it should also agree to inform a State that is not a party to the Montreux Convention, such as the U.S., and that submits a notification for transit, if another notification for transit for the same day is subsequently made. Article 24 requires Turkey to circulate information on notifications only to parties to the Convention.

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discrimination.

The Montreux Convention is ambiguous on the right of foreign naval vessels to transit and to anchor in the Straits at night. Article 10 states that:

"In time of peace, light surface vessels, minor war vessels and auxiliary vessels, whether belonging to Black Sea or non-Black Sea Powers, and whatever their flag, shall enjoy freedom of transit through the Straits without any taxes or charges whatever, provided that such transit is begun during daylight and subject to the conditions laid down in Article 13 and the articles following thereafter."

The obvious reading from the English text is that transit must be begun but need not be completed during the day. Foreign naval vessels in the Straits subsequent to a valid notification and daylight entrance would, therefore, retain their freedom of transit during night hours. The official French text is less clear-cut, however, employing the phrase "pourvu qu'ils y pénétrant de jour." The Office of Language Services informs us that the verb "pénétrer" has a normal meaning similar to the English verb "penetrate". It carries the implication that an entrance, but not necessarily also an exit, is made.

The Convention does not deal explicitly with whether or not night anchorage is permitted within the Straits, although Article 16 provides that "Vessels of war in transit through the Straits shall not, except in the event of damage or peril of the sea, remain therein longer than is necessary for them to effect the passage."

The Lausanne Convention, whose regime for the Straits the Montreux Convention replaced, was unambiguous on both points. Paragraph 2(a) of the Annex provided that in time of peace warships would enjoy "complete freedom of passage by day and by night under any flag...." Paragraph 4 of the Annex provided that "In no event shall warships in transit through the Straits, except in the event of damage or peril of the sea, remain therein beyond the time which is necessary for them to effect their passage, including the time of anchorage during the night if necessary for safety of navigation."

The preamble of Article 6 of the Turkish draft that formed the original basis for discussion at the Conference of Montreux sought to reduce the freedom granted by the Lausanne Convention.

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The relevant phrase provided only "free passage by day [libre passage de jour]." The U.K. draft that was introduced during the second week of the Conference established as a single condition that ships "enter the Straits by day [pourvu qu'ils entrent dans les Détroits de jour]." Both drafts contained language similar to that which became Article 16.

We have not been able to find in the negotiating record an indication of why the compromise verb "pénétrer" was inserted in Article 10. The Delegate of Roumania did note the difference between paragraph 4 of the Annex of the Lausanne Convention and the Turkish draft of what became Article 16 with regard to the requirement that vessels not remain in the Straits longer than necessary and said "It seems to me that the paragraph of the draft that we are examining leaves obscure up to a point the question of knowing whether a boat which is in transit and which takes more time because of its slowness can benefit from a night delay." The Turkish delegate responded, "In drafting the present text, we took care to give, as the Roumanian Delegate asks, all the time necessary to accomplish the passage [En rédigeant le texte actuel, nous avons pensé donner, comme le demande le délégué de la Roumanie, tout le temps nécessaire pour effectuer le passage.]"<sup>1/</sup> The Office of Language Services confirms that this response is ambiguously worded, and one cannot state with precision whether or not night passage or night anchorage are envisaged.

Internal evidence in the Convention strongly supports the thesis that night transit of the Straits is permitted provided only that, consistent with Article 10, the transit is begun by day, and, consistent with Article 16, the transit is accomplished as rapidly as possible given the conditions existing while the ship is in the Straits. The implication of "pénétrer" is, as already noted, more that of entrance than that of entrance and exit. The Turkish draft, which clearly did not envisage night transit, was significantly reworded. In another instance, the convention explicitly rejects the possibility of night transit for submarines. Thus Article 12 provides that submarines of Black Sea States "must travel by day ..." Failure to use similar language for surface ships indicates that they possess broader rights.

Ambiguous treaty texts commonly receive some elucidation from past practice. The fact that U.S. and Soviet, and perhaps other, naval vessels have on a number of occasions effected part of their transit at night without objection lends additional weight to the thesis that a right exists.

<sup>1/</sup> Actes, 49.

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It is also worth noting that a distinguished Turkish commentator, Feridun Cemal Erkin, in his work on Turko-Soviet Relations and the Question of the Straits, p. 119, pointed out as the only relevant condition on the transit of foreign naval vessels in time of peace that "Their entry into the Straits must be carried out by day [Leur entrée dans les Détroits doit s'effectuer de jour]." A French commentator, André Blondel, in his "Conference of Montreux and the New Regime of the Straits", published in the Revue de Droit Maritime Comparé shortly after the Conference, pointed out that entrance into the Straits by day was required in order to permit easier control and better surveillance, but did not extend the reasoning to suggest that all parts of the transit had to be by day.

The internal and other evidence is less strong on behalf of a right to anchor at night in the Straits. Here it seems most significant that a right to calculate night anchorages required for safety of navigation in the time necessary to effect passage was specifically included in the Lausanne Convention but not in the Montreux Convention, although virtually all the rest of the provision relating to a limitation on the time for transit was incorporated in Article 16. The implication is strong that the deletion was substantive. It was in any event deliberate as the exchange between the Roumanian and Turkish Delegates at the Conference showed. Probably then, the better interpretation is that night anchorage time may not be calculated in the time considered necessary to effect passage. Naval vessels in the Straits, whether travelling by day or night, would then be expected to proceed with all safe speed. Only damage or peril of the sea, as distinct from the normal navigational hazards of night, would justify a variation. A past record of night anchorages by the Soviets that have not been objected to by Turkey may lend some support to a contrary interpretation.

In summary, Turkey may argue that, unlike the Lausanne Convention, the Montreux Convention does not assert unequivocally a right to effect part of a transit at night, and perhaps that the record of past practice is not itself unambiguous. Nevertheless, a far stronger case may in our view be made that a Naval vessel may effect part of its transit by night provided only that it enters the Straits by day and proceeds as rapidly as safety factors permit. We would not argue that a persuasive case can be made for the existence of a right to anchor at night in the Straits.

The clearest aspect of these questions is, however, that whatever rules are applied by Turkey must be applied to all States without discrimination. Article 10 explicitly refers to

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"Black Sea or non-Black Sea Powers," and Article 16 likewise applies to all "vessels of war". It is not permissible, therefore, for Turkey under the Montreux Convention to grant more rights or more lenient reglementation with regard to night passage or night anchorage in the Straits to a Black Sea than to a non-Black Sea State. Turkey may, however, still exercise its right under Article 17 to invite a naval force to pay "a courtesy visit of limited duration" to a Turkish port in the Straits without regard for the normal conditions required by the Convention for transit through the Straits.

#### IV. Deception Practiced by USSR Civil Aircraft Under Article 23.

##### Discussion

Mr. Akyamac of the Foreign Office noted to an Embassy officer November 24 that the USSR was practicing deception with regard to civil aircraft under Article 23 of the Montreux Convention. We do not know the nature of the deception that concerns Turkey. There are two main possibilities: use of civil aviation rights under the Montreux Convention for military purposes, and abuse of notification procedures. We would, of course, be interested in carrying on fuller discussions with the Foreign Office, but the following general observations may be of use to the Embassy.

Overflights of the Straits by civil aircraft under certain conditions are envisaged by Article 23 of the Montreux Convention, which provides that:

"In order to assure the passage of civil aircraft between the Mediterranean and the Black Sea, the Turkish Government will indicate the air routes available for this purpose, outside the forbidden zones which may be established in the Straits. Civil aircraft may use these routes provided that they give the Turkish Government, as regards occasional flights, a notification of three days, and as regards flights on regular services, a general notification of the dates of passage.

"The Turkish Government moreover undertakes, notwithstanding any remilitarization of the Straits, to furnish the necessary facilities for the safe passage of civil aircraft authorized under the air regulations in force in Turkey to fly across Turkish territory between Europe and Asia. The route which is to be followed in the Straits zone by aircraft which have obtained an authorization shall be indicated from time to time."

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This article received considerable discussion during the negotiation of the Convention. The equivalent article of the Lausanne Convention of 1923 had provided unrestricted overflight rights in time of peace for all civil and military aircraft passing between the Mediterranean and Black Seas. Turkey proposed in its initial draft for the Conference at Montreux that no overflights of the Straits by any aircraft be permitted on the grounds that the military security of the Straits would otherwise be jeopardized. The United Kingdom Delegation and the French Delegation among others insisted, however, that, while Turkey's legitimate security concerns must be met, legitimate commercial concerns of civil aircraft should also be satisfied.

Under the solution adopted, it is clear that military aircraft are not provided rights under Article 23 to pass between the Mediterranean and Black Seas. Civil aircraft possess only such rights as are judged by Turkey satisfactory to its security situation. The principle of freedom of transit affirmed by Article 1 refers only to transit by sea. Thus Turkey is expressly permitted to establish forbidden zones with regard to the Straits that may not be entered by civil aircraft, though it agreed during the Conference to keep such zones to a minimum. Civil aircraft may utilize the routes that Turkey indicates after meeting the notice requirements. If at any time it is apparent that a civil aircraft is being used on those routes for military purposes, Turkey would, consistent with the clear record of the Conference of Montreux against overflights of the Straits for military purposes, be entitled to consult with the offending party, to redraw the forbidden zones, to indicate a new route outside those zones, and ultimately, to deny passage between the Mediterranean and Black Seas to the offending party. This step can be taken by Turkey on a selective basis against the offender and should not be taken against world civil aviation. Article 23 does not discriminate between States with regard to the opportunity to pass between the Mediterranean and Black Seas, but the reasonable import of the language and the negotiating history is that civil aviation that is not inimical to Turkey's security and that operates consistent with the Montreux Convention is to be assured.

With regard to possible deceptions practiced by Soviet or other civil aircraft over the Straits as part of flights, envisaged by the second paragraph of Article 23, between European and Asiatic Turkey, it is clear that Turkey possesses complete authority to deny permission for such flights under the established principle that a State may control use of its airspace.

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If deception is practiced by a State with regard to the notice required by Article 23, appropriate remedial action by Turkey would be to request an additional notice or, as the case may require, not to accept the notice. For example, Turkey may judge whether a flight is occasional and requires a separate three-day notice, or whether it is part of regular service and covered by a general notice, and it may forbid a flight for which it has not received the proper notice.

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discuter cet article ou les amendements qui y ont été proposés, nous réservons notre opinion au sujet de cet article. En son avis, il vaudrait mieux aborder l'examen d'un autre article et ne discuter celui-ci que lorsque la question sera éclaircie et que nous pourrions examiner la stipulation dans son ensemble.

Le Président [Traduction]. — Il est donc proposé d'ajourner la discussion de cet article. Nous ne pouvons indéfiniment différer l'examen des articles pour permettre aux conversations particulières dont ils sont l'objet de pouvoir se dérouler, ou alors cette Conférence n'aura point de fin. Je considérerais donc, est-ce qui est l'article 9, que nous en ajournons l'examen, non pas pour qu'il puisse faire l'objet de conversations privées, mais parce que nous ne possédons pas à son sujet toutes les instructions qui nous seraient nécessaires.

La suggestion du Président est adoptée.

#### Article 10.

Pour le passage dans les Détroits des navires de guerre et des navires auxiliaires, un préavis de quinze jours devra être donné au Gouvernement turc par la voie diplomatique. Dans ce préavis devront être indiqués la destination, le nom, le type et le nombre des navires ainsi que la date de passage pour l'aller et, s'il y a lieu, pour le retour. Tout changement de date devra faire l'objet d'un préavis de trois jours.

L'entrée dans les Détroits pour le passage d'aller devra avoir lieu dans un délai de cinq jours à partir de la date indiquée dans le préavis initial. Après l'expiration de ce délai, il devra être donné un nouveau préavis de quinze jours.

Lors du passage, le commandant de la force navale communiquera, sans avoir à s'arrêter à une station de signalisation à l'entrée des Dardanelles ou du Bosphore, la composition exacte de la force se trouvant sous ses ordres ainsi que tous renseignements complémentaires relatifs à cette force.

M. POLTIS, Président du Comité de rédaction. — Le Comité a réservé la rédaction définitive de ce texte jusqu'après examen, par la Conférence, d'un amendement présenté par la délégation soviétique :

Amendement présenté par la délégation de l'Union des Républiques soviétiques socialistes.

1) Dans la première phrase du 1<sup>er</sup> alinéa, supprimer les mots : « de quinze jours », et ajouter, à la fin de cette phrase, les mots suivants :

« ce préavis étant de quinze jours pour le passage des navires des Etats non riverains de la mer Noire, et de trois jours pour celui des navires des Etats riverains de cette mer ».

2) A la fin du 2<sup>e</sup> alinéa, supprimer les mots : « de quinze jours ».

M. MENEMENCOGLU (Turquie). — Les discussions du Comité de rédaction ont été, sur ce point, assez confuses. C'est pourquoi je voudrais préciser le sens que nous attribuons au préavis.

Le préavis de trois jours qui a été adopté ne peut jouer, en réalité, que dans les quinze jours dont il est fait mention dans l'article. Cette précision étant donnée, je n'ai rien à ajouter.

M. ARAS (Turquie). — En m'inspirant de l'amendement soviétique et de l'amendement britannique, je voudrais proposer un compromis dont voici le sens et qui devrait être mis au net par le Comité de rédaction : Nous admettons un préavis de huit jours comme règle, mais les pays de la Méditerranée et au delà sont priés de donner un préavis de quinze jours.

Le Président [Traduction]. — Le Comité de rédaction ne pourra travailler que si, au préalable, nous précisons le principe en séance plénière; il ne peut s'occuper que des questions de mots.

M. RENDEL (Royaume-Uni) [Traduction]. — Je n'aperçois pas exactement quelle est la portée de la suggestion turque, car tout dépend de la signification précise des mots « sera prié ou requis de donner un préavis d'au moins quinze jours ». Nous avons toujours considéré qu'une seule et même règle devrait s'appliquer à toutes les parties. Nous ne voyons pas d'objection à ce qu'un espoir soit exprimé ou à ce qu'on dise qu'il serait désirable qu'une procédure différente soit appliquée aux Puissances non riveraines de la mer Noire, mais il ne ressort pas très clairement des déclarations que M. Aras vient de faire, jusqu'à quel point il serait possible, pour une flotte d'un pays non riverain de la mer Noire, de compter, en cas d'urgence, sur la règle des huit jours par laquelle est écartée la nécessité, pour une telle Puissance, de donner un préavis d'au moins quinze jours.

On a dit que la question que nous avons tous présentée à l'esprit serait résolue si l'on adoptait une période de huit, de dix jours, ou une autre période et si, par le moyen d'un échange de notes ou d'un protocole additionnel ou de quelque autre instrument de ce genre, les Puissances non riveraines de la mer Noire pouvaient accepter de donner un préavis plus long. Je ne sais pas si cela serait possible, mais ce que nous désirons conserver dans l'article, c'est le principe de l'égalité, tout en adoptant une formule qui, en fait, amènerait les Puissances non riveraines de la mer Noire à donner un préavis plus long sans avoir réellement l'obligation de le faire.

M. ARAS (Turquie). — Je n'ai pas constaté une différence entre ma suggestion et le point de vue de la délégation britannique. J'ai voulu dire que, normalement, on serait tenu de donner un préavis de huit à dix jours, mais qu'il est toutefois désirable que ce préavis soit porté à quinze jours pour les Puissances non riveraines.

M. RENDEL (Royaume-Uni) [Traduction]. — Nous n'avons aucune objection à faire à la formule que vient de suggérer le représentant de la Turquie. Ce qui m'avait amené à prendre la parole, c'est qu'il avait dit que les Puissances en question étaient invitées à donner un préavis plus long, de quinze jours au moins. Cela me paraissait être l'expression plutôt d'une obligation que d'un espoir ou que d'une chose désirable, à la différence de ce que le délégué turc propose maintenant.

Le PRÉSIDENT [Traduction]. — Dans ces conditions, le Comité de rédaction devra être prié de se rédiger cet article sur la base suivante : le préavis normal sera de huit jours, mais il est souhaitable, dans le cas des Puissances non riveraines de la mer Noire, que ce délai soit porté à quinze jours.

*Approuvé.*

M. RENDEL (Royaume-Uni) [Traduction]. — Je propose qu'on laisse au Comité de rédaction le soin d'examiner quelle est la meilleure méthode à adopter. Il est possible qu'il juge qu'une note additionnelle ou un protocole additionnel conviendrait mieux. Le Comité de rédaction devrait être appelé à se prononcer sur ce point.

Le PRÉSIDENT [Traduction]. — Je ne crois pas qu'il appartienne au Comité de rédaction ou à n'importe qui d'autre de prendre une décision de cette nature. Seule la Conférence plénière est qualifiée pour examiner la forme que doit prendre tout accord auquel on arrive ici. Les pouvoirs que peut avoir un Comité de rédaction ne doivent pas dépasser les questions de mots et ne sauraient s'étendre à une question de principe telle que celle qui vient d'être soulevée.

M. LIVVONOFF (Union des Républiques soviétiques socialistes). [Traduction]. — Il ne s'agit pas d'une question de principe mais d'une question de réalités. Je n'insiste pas pour qu'il soit fait une discrimination entre Etats riverains de la mer Noire et autres Etats, je n'insiste même pas pour qu'on se serve des expressions « pays riverains de la mer Noire » et « pays non riverains de cette mer ». Je m'intéresse uniquement à la réduction du délai pour les pays situés près de la mer Noire, et je mentionne ce point à l'intention du Comité de rédaction. J'ai pour instruction de ne pas aller au delà de cinq jours, mais je prends sur moi d'accepter la période de huit jours.

Le PRÉSIDENT [Traduction]. — La question soulevée par le représentant de l'Union des Républiques soviétiques socialistes est réglée en fait car, après que la délégation turque eût fait connaître sa manière de voir, j'ai demandé très nettement si nous étions d'accord sur la base de huit jours. Puis-je considérer que tel est le cas ?

La base de huit jours est adoptée.

#### Article 11.

(Les deux premiers alinéas doivent encore être examinés par la Conférence.)

Alinéa 3. — *Ne seront pas compris dans ce tonnage les navires appartenant à des Puissances riveraines ou non riveraines de la mer Noire qui, conformément aux dispositions de l'article 14, rendent visite à un port turc des Détroits.*

Alinéa 4. — *Ne seront pas davantage compris dans ce tonnage les navires de guerre qui auraient subi une avarie lors de la traversée; ces navires se soumettront, pendant les réparations, aux dispositions spéciales de sécurité édictées par la Turquie.*

(Un amendement de la délégation turque<sup>1</sup> doit être examiné par la Conférence.)

(Un amendement de la délégation du Japon<sup>2</sup> a été examiné par le Comité technique, qui a décidé de remplacer ce texte par un protocole additionnel dont la rédaction a été confiée à la délégation turque.)

M. ARAS (Turquie). — Au cours de nos pourparlers particuliers au sujet de cet article 11, nous étions arrivés à un compromis. La délégation turque a pensé donner satisfaction à tout le monde en suggérant le chiffre de quinze mille tonnes qui constitue, à l'heure actuelle, la moitié de la flotte turque active. Je priez, par conséquent, de supprimer la fin du premier alinéa à partir des mots « la moitié du tonnage global... » et de maintenir purement et simplement la limite de 15.000 tonnes.

Le PRÉSIDENT [Traduction]. — Si je comprends bien, les deux critères ne doivent pas continuer à co-exister. L'un est le chiffre de 15.000 tonnes, l'autre la moitié de la flotte en service actif de la Turquie. Il me semble que le deuxième doit disparaître. En est-il ainsi ?

M. POLITS, Président du Comité de rédaction. — Dans ce cas, le texte deviendrait plus clair si on supprimait toute espèce d'ellusion à un pourcentage par rapport à la flotte turque, et si l'on disait simplement : « ne devra pas dépasser quinze mille tonnes. »

Le PRÉSIDENT [Traduction]. — On nous propose donc d'accepter la seule limite de 15.000 tonnes et de renvoyer l'article au Comité de rédaction.

M. RENDEL (Royaume-Uni) [Traduction]. — Sur ce point, je voudrais dire, — bien que nous soyons désireux de donner satisfaction dans toute la mesure du possible à la délégation turque, — que ce serait une concession considérable de notre part que d'accepter sa proposition. Dans toutes

<sup>1</sup> Voir page 135.

<sup>2</sup> Voir page 267.